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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 353

IN THE MATTER OF VINCENT BENDIX, BANKRUPT,

ARMIN F. HILLMER, AS REPRESENTATIVE OF CREDITORS OF CHICAGO BANK OF COMMERCE,

Petitioner,

vs.

VINCENT BENDIX,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT OF THE APPLICATION.

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vs.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

Petitioner Armin F. Hillmer, as representative of creditors of Chicago Bank of Commerce, prays the issuance of a writ of certiorari to review a judgment of the Circuit Court of Appeals for the Seventh Circuit affirming, upon appeal, an order entered by the District Court of the United States for the Northern District of Indiana, South Bend Division, which order denied a petition for review from an order of a referee in bankruptcy dismissing specifications of objections to discharge and ordering the discharge of Vincent Bendix, bankrupt.

Summary Statement of the Matter Involved.

Petitioner, Armin F. Hillmer, as representative of the creditors of Chicago Bank of Commerce, recovered a judgment against the bankrupt, Vincent Bendix, against whom a petition in bankruptcy was filed on May 24, 1939 (R. 5). An order of adjudication was entered June 7, 1939 (R. 5). On August 22, 1940, specifications of objections to the discharge of the bankrupt were filed by petitioner (R. 25). Certain of the specifications having been dismissed, amended specifications were filed and hearings were held on the merits (R. 40-43). On April 17, 1941, the referee entered an order refusing the objecting creditor leave to file two further specifications of objections made to conform with the proof, dismissed all the specifications of objections, and ordered the bankrupt discharged (R. 228). A petition for review was filed (R. 229-33) and the matter heard by the district court without further proof. The district court denied the petition for review and affirmed the order of discharge (R. 237-38). Upon appeal to the Circuit Court of Appeals for the Seventh Circuit the order of the district court was affirmed (R. 265) on April 23, 1942. Petition for rehearing was filed May 8, 1942 (R. 269-86). On May 15, 1942, the bankrupt answered the petition for rehearing (R. 291-97). On June 3, 1942, petition for rehearing was denied.

Jurisdiction of the Court.

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code, as amended by the act of February 13, 1925, and Section 24(c) of the Bankruptcy Act; 11 U. S. C. 47(c). The decision hereby sought to be reviewed was entered April 23, 1942, and petition for rehearing was denied June 3, 1942. The opinion (R. 260-64) is reported at 127 Fed. (2d) 759 as *In re Bendix.*

Questions Presented.

1. Whether under Section 14 of the Bankruptcy Act (11 U. S. C. 32) a court of bankruptcy is justified in placing the burden of proof upon the objecting creditor even though a number of associates of the bankrupt have surrendered to the trustee substantial sums of cash and valuable property.

2. Whether under Section 14 of the Bankruptcy Act (11 U. S. C. 32) a court of bankruptcy is justified in placing the burden of proof upon the objecting creditor even though the bankrupt has, under the terms of a turnover order, been found to have made a transfer while insolvent for the purpose, and with the effect, of hindering, delaying and defrauding his creditors.

3. Whether under the provisions of Section 14 of the Bankruptcy Act (11 U. S. C. 32) a court of bankruptcy is justified in refusing to consider assets surrendered to the trustee and assets ordered to be turned over to the trustee, as having been conveyed in fraud of creditors, as evidence of concealment of assets.

4. Whether the Federal Court is justified in refusing to recognize the right of a creditor of an Illinois Bank to represent all creditors in prosecuting claims against a stockholder of said bank.

5. Whether a court of bankruptcy is justified in discharging a bankrupt whose books omit substantial transactions and contain material false entries.

6. Whether a court of bankruptcy is justified in ratifying a bargain relating to the subject of discharge.

Reasons Relied Upon for the Allowance of the Writ.

1. The Circuit Court of Appeals for the Seventh Circuit has rendered a decision in conflict with a decision of the First Circuit Court of Appeals upon the same point.

2. The Circuit Court of Appeals has erroneously decided a question of Illinois law in conflict with the statute of Illinois and the decisions of the Illinois courts.

Prayer.

WHEREFORE, petitioner prays that this court may issue its writ of certiorari to review the aforesaid judgment of the Circuit Court of Appeals for the Seventh Circuit, and that the said decision may upon review be reversed.

ARMIN F. HILLMER, *as representative of creditors of Chicago Bank of Commerce,*

Petitioner.

GEORGE EDWARD LEONARD,

Counsel for Petitioner.